

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EDWARD WEST,

Plaintiff,

v.

OPINION and ORDER

UNITED STATES OF AMERICA,

16-cv-785-bbc

Defendant.

Pro se prisoner and plaintiff Edward West has filed an amended complaint in response to the court's February 8, 2017 order dismissing his original complaint without prejudice. Plaintiff had alleged that a dentist at the Federal Correctional Institution acted negligently by using an experimental drug on him that caused him to become infected with HIV. The court concluded that plaintiff's allegation was conclusory and implausible, but gave him an opportunity to file an amended complaint that provided more factual detail.

Plaintiff's amended complaint is still somewhat difficult to follow, but he seems to be raising two separate claims. First, he alleges that he became infected with HIV while he was working as a dental assistant at the prison because he was exposed to dirty "needle sticks" as a result of the negligence of prison staff. Second, he alleges that the prison dentist injected him with an unknown experimental drug that he falsely told plaintiff was a vaccination.

As he did in his first complaint, plaintiff says that he wants to bring a claim for negligence under the Federal Tort Claims Act, which directs courts to apply “the law of the place where the act or omission occurred,” 28 U.S.C. § 1346(b); Gil v. Reed, 381 F.3d 649, 658 (7th Cir. 2004), which in this case is Wisconsin. Thus, to prevail on his claims, West must show that a federal employee breached a duty owed to him and that the breach was a cause of his injuries. Gil, 381 F.3d at 658; Paul v. Skemp, 2001 WI 42, ¶ 17, 242 Wis. 2d 507, 625 N.W.2d 860, 865 (2001).

Plaintiff’s allegations still seem implausible, but not so much so that they can be rejected at the pleading stage. If his allegations are true, they would support a claim that prison staff acted negligently by exposing him to a risk of HIV infection and prescribing treatment without informed consent. To prevail on his claim regarding his HIV infection, plaintiff will have to show that he is in fact HIV positive and that defendant’s negligence caused the infection. To prevail on his claim regarding the drug he received, plaintiff will have to show that the dentist falsely represented the nature of the drug that he was providing plaintiff or otherwise harmed plaintiff by failing to adhere to the appropriate standard of care.

ORDER

IT IS ORDERED that

1. Plaintiff Edward West is GRANTED leave to proceed on claims that defendant United States of America acted negligently by exposing plaintiff to HIV and injecting him with an unknown drug.

2. The clerk of court is directed to forward this order, the amended complaint and summons forms to the United States Marshal for service on the United States.

3. Once the defendant answers the complaint, the clerk of court will set a telephone conference before Magistrate Judge Stephen Crocker. At the conference, Magistrate Judge Crocker will set a schedule for the case.

5. For the time being, plaintiff must send defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or its attorney.

6. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

7. If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendant or the court are

unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 22d day of March, 2017.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge